

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ROBIN BOYETTE**

Claimant

VS.

**HALLMARK CARDS, INC.**

Self-Insured Respondent

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Docket No. 268,590

**ORDER**

Claimant requested review of the March 18, 2003 Award by Administrative Law Judge Bryce D. Benedict. The Board heard oral argument on October 2, 2003.

**APPEARANCES**

Patrick R. Nichols of Lawrence, Kansas, appeared for the claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The Administrative Law Judge (ALJ) found the claimant did not sustain her burden of proof that she suffered from an occupational disease arising out of and in the course of employment.

The sole issue raised on review by the claimant is whether she met her burden of proof to establish a causal connection between her work and a temporary liver function abnormality that she experienced. Claimant argues exposure to chemicals in the workplace caused her to suffer illness related to an onset of temporary liver dysfunction. Claimant agrees that she has recovered and does not allege she suffered any permanent impairment. Claimant concludes the Board should find she has met her burden of proof

to establish workplace exposure to chemicals caused a temporary onset of liver disease and affirm the preliminary hearing decision ordering temporary total disability compensation.

Conversely, the respondent argues the ALJ's Award should be affirmed because the evidence failed to establish a causal connection between the claimant's employment and her temporary liver dysfunction. In the alternative, if the claim is determined to be compensable, the respondent argues there was an overpayment of temporary total disability compensation. And respondent further argues claimant would not be entitled to future medical treatment because her liver dysfunction was admittedly a temporary condition which has resolved without any permanent impairment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant started working for the respondent on January 27, 1994, as a feeder packer in a department responsible for the manufacturing and packing envelopes. On April 9, 2001, claimant woke up with left leg pain, nausea, and stomach pains. As a result of those symptoms, claimant on her own, sought medical treatment from Dr. Juliana M. Reser at the Haskell Indian Health Center located in Lawrence, Kansas.

The claimant was seen by a nurse practitioner. Claimant was initially treated for a suspected blood clot in her leg and blood samples were obtained for testing. Claimant was taken off work because of the phlebitis in her leg. The blood test results on April 13, 2001, indicated that claimant's liver enzyme count was high. A second set of blood samples were obtained on April 18, 2001. The repeat study on April 18, 2001, showed the SGPT, which is more specific for the liver, was still elevated but the SGOT, which is more specific for other tissues, was normal.

Dr. Reser first examined claimant on April 26, 2001, and she found liver tenderness and mild tenderness in the calf of claimant's left leg. Her impression was hepatitis of uncertain etiology and phlebitis of the left leg. The next time Dr. Reser saw claimant was on May 3, 2001. Her physical examination revealed slight left calf tenderness and mild tenderness of the liver. Dr. Reser noted claimant worked around chemicals and claimant was kept off work.

Because of the elevated liver enzymes, Dr. Reser referred claimant to Dr. Curtis A. Baum in Topeka, Kansas, for a gastroenterology consultation. Dr. Baum had claimant undergo additional blood tests on June 18, 2001, which showed that claimant's liver enzymes were normal. Additional testing for other causes of elevated liver enzymes, such

as hepatitis as well as autoimmune disease of the liver, was also conducted and returned with negative findings.

Dr. Reser returned claimant to work for four hours per day on June 25, 2001. Dr. Reser noted that the four-hour limitation was due in large part to claimant's phlebitis condition in her leg. When claimant returned for a follow-up visit on July 3, 2001, she reported to the doctor that she was not working with inks. But claimant testified that she had returned to the same job.

During the July 27, 2001, follow-up visit, Dr. Reser found claimant again complaining of nausea and pain in her abdominal area since July 24, 2001. On physical examination, Dr. Reser also found tenderness in claimant's liver and concluded the liver was enlarged one centimeter beyond the costal margin. The doctor diagnosed hepatitis of uncertain etiology or possible chemical exposure. The claimant was taken off work.

On claimant's follow-up visit on August 28, 2001, she had no pain, her liver was back to normal size and the examination of the liver did not indicate any tenderness. Dr. Reser released claimant to work on October 15, 2001, but with the restriction not to work in areas exposed to chemicals contained in the ink, glue and paint. Respondent could not accommodate those restrictions.

In a November 21, 2001, letter to claimant's attorney, Dr. Reser stated claimant had none of the usual causes of liver disease such as hepatitis, heavy alcohol drinking or drug use. But significant in claimant's history was the fact that she was regularly exposed to chemical substances at work. Dr. Reser went on to opine that she thought there was a cause and effect relationship between claimant's chemical exposure at work and the elevated liver enzyme levels. But Dr. Reser agreed that it would be appropriate to refer claimant to a specialist in chemical exposure.

Following a preliminary hearing on November 28, 2001, claimant was referred to Dr. Allen J. Parmet for additional treatment. Because further testing did not reveal elevated liver enzymes the claimant was returned to limited and then full-time work. In fact, only the April 13 and April 18 tests indicated abnormal liver enzyme results. Four additional liver function studies, performed in June and on three occasions in July 2001, were all within normal limits.

Dr. Parmet released claimant from further care on April 19, 2002. At that time the doctor noted that although it was possible claimant's initial liver function abnormalities might have been work-related, it was also possible it was due to incidental viral infection or other unknown agents. The doctor concluded that an absolute determination of causality could not be made to a reasonable degree of medical certainty.<sup>1</sup>

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<sup>1</sup> Parmet Depo., Ex. 3.

When claimant was released to return to work by Dr. Parmet, she operated a different machine, away from the glue room and she noted the inks were being provided by a different company. Claimant further noted that some walls had been removed and the area where she worked was more open. Claimant was able to return to her work without any further difficulties.

Claimant testified that when she first began work for respondent she did not tint or print envelopes but later the machines ran ink to color the envelopes. And claimant noted that the ink changed as different companies would supply that product. Claimant also noted that the machine she operated was next to the glue room where that product was mixed in tanks. But claimant agreed that she had operated her machine under those conditions for approximately seven years without incident.

Dr. Reser testified that the reason for her causation opinion relating claimant's liver dysfunction to her work was because of the temporal relationship between the onset of symptoms and work. The doctor noted claimant improved when she was off work and then worsened when she first attempted to return to work in July 2001. She further noted that her opinion was also based on the exclusion of other possible causes, such as hepatitis and autoimmune disease. But it was the temporal relationship that led to the doctor's causation opinion. She testified:

Q. [Mr. Worth] Would it be fair to say, Doctor, that the only real basis you have for stating an opinion, as you have here today, that there is a connection between chemical exposure in the workplace and the condition you found in regard to Ms. Boyette's liver is that there is some sort of a temporal relationship in your own mind about that exposure?

A. [Dr. Reser] That's true.<sup>2</sup>

The doctor further explained:

Q. I want to separate suspicion from more likely than not. At what point in time did you arrive at the opinion you've stated here today that it's more likely than not exposure to some chemical in the workplace caused her to have this liver dysfunction?

A. Following her clinical exams of improvement when she was off work versus getting sick again when she went back to work, improvement again with being off work.

Q. So we're back to the temporal relationship?

A. Plus knowledge that she had, that she worked around that class of chemicals.

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<sup>2</sup> Reser Depo. at 23.

Q. Which class of chemicals are you talking about?

A. Solvents, paints, glues.

Q. When did you obtain that information?

A. That was, you know, fairly early on. That was the end of April that she said she was working around inks.

Q. So you're referencing what Miss Boyette told you?

A. Yes.

Q. And you are making certain assumptions, are you not, about the fact that she was in fact exposed to these and it was in fact of a sufficient duration to be harmful to her?

A. I only had her word.<sup>3</sup>

The doctor further agreed that she did not know whether claimant was exposed for any length of time to any chemicals or whether water based inks could cause liver dysfunction. And the doctor agreed there were many possible causes for liver dysfunction and claimant's testing had only ruled out the more common causes. Lastly, the doctor agreed that when claimant returned to work the first time she did not have a corresponding elevation of her liver enzymes.

Dr. Parmet testified that there are many possible causes for elevated enzyme counts and there was no way to establish whether any of the chemicals in the respondent's workplace were the cause of claimant's elevated liver enzymes. The doctor opined:

Q. Doctor, having listened to Ms. Boyette during your several examinations, reviewed her testimony at hearing, reviewing all the prior medical records as well as all the MSDS sheets made available for your review, can you tell the Court that it is more probably true than not true that her single elevated liver enzyme is causally related to anything in which she was exposed at the workplace?

A. I cannot say.<sup>4</sup>

Dr. Parmet noted that after claimant first attempted to return to work she had again expressed complaints and that Dr. Reser had indicated claimant's liver was enlarged. Dr. Parmet further noted that if the liver is inflamed and becomes swollen and tender, it almost

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<sup>3</sup> Id. at 33-34.

<sup>4</sup> Parmet Depo. at 15-16.

invariably is accompanied by an extremely high level of enzymes. At the time Dr. Reser concluded claimant had an enlarged liver, the enzyme testing was normal. And Dr. Parmet further opined that it is difficult on examination to determine if the liver is enlarged without confirmation by ultrasound or CT scan.

Although Dr. Parmet did conclude that respondent's workplace did contain a number of chemicals that could cause the type of problem claimant suffered, he further explained:

Q. [Mr. Nichols] In reviewing the reports, Doctor, is it fair to say, though, that there were quite a substantial number of potential occupational chemicals in the workplace that could cause this type of problem?

A. Qualitatively, yes.

Q. When you say qualitatively, what do you mean?

A. Qualitatively means the chemicals are present. Whether they're present in large enough quantities to do harm is totally different issue. I can assure you I have similar and worse chemicals within a few feet of where you're sitting.<sup>5</sup>

K.S.A. 44-501(a) states in part:

In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends.

K.S.A. 44-508(g) defines burden of proof as follows:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.

The burden of proof is upon the claimant to establish his right to an award and must be established by a preponderance of the credible evidence.<sup>6</sup> It is the function of the trier of facts to decide which testimony is more accurate and/or credible and to adjust the medical testimony, along with the testimony of the claimant, and any other testimony that may be relevant to the question of disability. The trier of facts is not bound by medical evidence presented in the case and has the responsibility of making its own determination.<sup>7</sup>

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<sup>5</sup> Id. at 19.

<sup>6</sup> *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

<sup>7</sup> *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

The Kansas Court of Appeals has interpreted the occupational disease statute (K.S.A. 44-5a01) to require only that a claimant have a “disease,” the disease result from claimant’s employment, and that it not be one of the ordinary diseases of life.<sup>8</sup> The Board recognizes the principle that in a workers compensation case medical testimony is not essential to the establishment of a worker’s disability.<sup>9</sup> The Board finds, however, that while expert medical testimony is not essential, in this case, it is an important factor in determining whether claimant’s symptoms and condition had a causal relationship to her work. Whether an accident arises out of and in the course of a worker’s employment depends upon the facts peculiar to each case.<sup>10</sup>

In establishing the right to an award of compensation claimant must prove the right to recovery by a preponderance of the credible evidence. Dr. Parmet was unable to state within a reasonable degree of medical probability that there was an association between claimant’s elevated liver enzymes and her exposure to chemicals, if any, while at work. Dr. Reser, on the other hand, says there was a relationship, but the doctor simply relies upon a temporal relationship between the onset of symptoms and claimant’s work. And the doctor based her opinion that there was a chemical exposure simply upon claimant’s assertion that she worked around chemicals. The record fails to establish what chemical or chemicals, if any, rendered claimant ill. As such, the Board finds Dr. Parmet’s opinion more persuasive and affirms the ALJ’s Award finding claimant has failed to prove by a preponderance of the credible medical evidence her entitlement to benefits in this instance.

It is claimant’s responsibility to prove that her occupational disease had its origin in a special risk connected with her particular type of employment. While in certain circumstances it might be shown that exposure to chemicals in claimant’s workplace could cause the symptoms experienced by claimant, the Board finds, in this case, the claimant has failed in her burden of proving the connection between the elevated liver enzymes and her employment with the respondent. The Board affirms the ALJ’s determination claimant did not sustain her burden of proof that she suffered from an occupational disease arising out of and in the course of employment.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated March 18, 2003, is affirmed.

**IT IS SO ORDERED.**

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<sup>8</sup> *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 754, 907 P.2d 923, (1995), *rev. denied* 259 Kan. 927 (1996).

<sup>9</sup> See *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 201, 547 P.2d. 751 (1976).

<sup>10</sup> *Newman v. Bennett*, 212 Kan. 562, 568, 512 P.2d 497 (1973).

Dated this \_\_\_\_\_ day of October 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Patrick R. Nichols, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director